

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SPENCER EARL ROGERS,	)	Case No.: 1:20-cv-0142 JLT HBK (HC)
	)	
Petitioner,	)	ORDER ADOPTING THE FINDINGS AND
	)	RECOMMENDATIONS, DENYING FIRST
v.	)	AMENDED PETITION FOR WRIT OF HABEAS
	)	CORPUS, DIRECTING CLERK OF COURT TO
CHRISTIAN PFEIFFER,	)	CLOSE CASE, AND DECLINING TO ISSUE
	)	CERTIFICATE OF APPEALABILITY
Respondent.	)	
	)	(Docs. 14, 32)
	)	

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Spencer Earl Rogers is a state prisoner proceeding on a first amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising two grounds for relief: (1) evidence by the prosecution's gang expert was hearsay, and trial counsel's failure to object to inadmissible evidence, violated Petitioner's Fourteenth and Sixth Amendment rights to confrontation and effective assistance of counsel; and (2) California Penal Code § 3051, which make offenders under the age of 25 who were sentenced to life without parole ineligible for youth offender parole hearings, violates Petitioner's rights to equal protection under the Fourteenth Amendment and protection against cruel and unusual punishment under the Eighth Amendment. (Doc. 14.)

The assigned magistrate judge issued Findings and Recommendations, recommending the first amended petition for writ of habeas corpus be denied and the Court decline to issue a certificate of appealability. (Doc. 32.) Petitioner objects to the magistrate judge's Findings and Recommendations. (Doc. 39.)

1 As an initial matter, Petitioner objects to the magistrate judge's finding that both grounds  
2 for relief were deficiently pled. (Doc. 39 at 8-13, 31.) Despite this finding, however, the  
3 magistrate judge considered the merits of Petitioner's claims. Thus, the objection does not  
4 provide any basis to decline to adopt the findings related to the merits.

5 As to his first ground for relief, Petitioner restates arguments made in his Reply, arguing  
6 they were not adequately considered by the magistrate judge. For example, Petitioner claims the  
7 magistrate judge failed to "meaningfully grapple" with the "undeniably prejudicial" volume of  
8 case-specific evidence presented by the gang expert Malley at trial, including booking statements,  
9 police reports, and street check reports; and "neglected to account for the prosecutor's heavy  
10 reliance on testimonial hearsay evidence in his closing." (Doc. 39 at 13-18). Similarly, Petitioner  
11 argues the magistrate judge "completely disregarded" his arguments made in the Reply that  
12 evidence identified as admissible by the state court did not prove Petitioner's gang affiliation  
13 beyond a reasonable doubt, because the substance of the phone calls did not prove he was an  
14 active participant or that he acted for the benefit of a gang, and the witness testimony "had  
15 massive credibility problems." (*Id.* at 20-26.)

16 Importantly, as noted by the magistrate judge, habeas relief is not available "unless the  
17 harmlessness determination itself was unreasonable," and "[t]o meet this standard, Petitioner  
18 must show that the state court's decision to reject his claim 'was so lacking in justification that  
19 there was an error well understood and comprehended in existing law beyond any possibility for  
20 fairminded disagreement.'" (Doc. 32 at 29, internal citations omitted). The magistrate judge  
21 addressed Petitioner's argument that the jury heard a "significant volume" of inadmissible  
22 evidence from the gang expert, and his argument that the admissible evidence did not amount to  
23 substantial evidence of Petitioner's gang affiliation. (*Id.* at 29-30.) Petitioner's objections do not  
24 meaningfully cast doubt on the state appellate court's finding that admission of the gang expert's  
25 hearsay statements was harmless error in light of the properly admitted evidence, including  
26 wiretapped conversations played for the jury and testimony that Petitioner was a gang member  
27 and admitted to the gang-related purpose for one of the shootings. *See Brecht v. Abrahamson*, 507  
28 U.S. 619, 637–38 (1993) (a constitutional violation is a harmless error unless the error had

1 “substantial and injurious effect or influence in determining the jury's verdict.”).

2 As to his second ground for relief, Petitioner argues that “habeas is a valid mechanism to  
3 challenge equal protection violations resulting in unfair or illegal sentences” because the  
4 reasoning of *Nettles* is inapplicable to equal protection challenges to the denial of youth offender  
5 parole consideration under § 3051. (Doc. 39 at 31-36.) Petitioner cites no case law to directly  
6 support a finding that an equal protection challenge is not cognizable on habeas corpus review.  
7 The Court declines Petitioner’s suggestion to “diverge from” the consistent holdings of district  
8 courts in California, and the magistrate judge’s conclusion in this case, that an equal protection  
9 challenge to eligibility for a youth offender parole is not cognizable on habeas corpus. *See, e.g.,*  
10 *Saese v. Lynch*, 2023 WL 3380100, at \*2 (E.D. Cal. Apr. 25, 2023) (“[b]ecause petitioner seeks  
11 only to be granted a youth offender parole hearing, at which he may or may not be granted parole,  
12 success on the merits of the petition will not guarantee his speedier release and this court lacks  
13 [habeas] jurisdiction”); *Turner v. Foss*, 2020 WL 3971599, at \*3 (S.D. Cal. Jul. 14, 2020)  
14 (finding equal protection challenge to § 3051 not cognizable on habeas petition); *Johnson v.*  
15 *Lozano*, 2020 WL 959253 (C.D. Cal. Jan. 17, 2020) *adopted*, 2020 WL 949953 (C.D. Cal. Feb.  
16 26, 2020) (no federal habeas jurisdiction where petitioner claimed administration of California  
17 Penal Code § 3105 violated the Equal Protection clause of the California Constitution).

18 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this  
19 case. Having carefully reviewed the matter, including Petitioner’s objections, the Court concludes  
20 the Findings and Recommendations are supported by the record and proper analysis.

21 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather  
22 an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36  
23 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court may only  
24 issue a certificate of appealability “if jurists of reason could disagree with the district court’s  
25 resolution of [the petitioner’s] constitutional claims or that jurists could conclude the issues  
26 presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327;  
27 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the  
28 merits of his case, he must demonstrate “something more than the absence of frivolity or the

1 existence of mere good faith on his . . . part.” *Miller-El*, 537 U.S. at 338.

2 The Court finds that reasonable jurists would not find the determination that the petition  
3 should be denied debatable or wrong, or that the issues presented are deserving of encouragement  
4 to proceed further. Petitioner did not make the required substantial showing of the denial of a  
5 constitutional right. Therefore, the Court declines to issue a certificate of appealability. Based  
6 upon the foregoing, the Court **ORDERS**:

- 7 1. The Findings and Recommendations issued on August 29, 2023 (Doc. 32) are  
8 **ADOPTED** in full.
- 9 2. The amended petition for writ of habeas corpus (Doc. 14) is **DENIED**.
- 10 3. The Court declines to issue a certificate of appealability.
- 11 4. The Clerk of Court is directed to close the case.

12  
13 IT IS SO ORDERED.

14 Dated: **March 19, 2024**

  
UNITED STATES DISTRICT JUDGE